by the Panchayat for surrendering necessary lands free. If these jenmies would help us by giving us some land free for this important road which will benefit them principally, we will be very enthusiastic to take up those works also. Even as it is that road is passable insummer, but it is not a poramboke road. It requires conversion into a poramboke one. If the Hon'ble Mover would help us in that direction, we will only be too glad to take up this work. I once more beg to submit that we accept the spirit of the resolution and we always keep in view that more and more roads have to be opened in the interests of the people.

Mr. A. Eachara Menon.—In the light of the assurance given by the Government, I do not press the resolution.

Resolution was, with leave, withdrawn.

7. Defaulting Prized Subscribers of Kuries.

Mr. K. Mahomed Seethi.—*This Council recommends to the Government that a proclamation may be issued to the effect that starters of kuries can sue defaulting prized subscribers only for the defaulted amounts with power to convert the suit into one for the whole of the future instalments in case the defaulted amount and costs are not deposited in court before evidence is entered.*

Sir, this resolution recommends to the Government that a slight modification in the Proclamation issued with regard to the kuries might be attempted in the interests of the suffering kuri subscribers and also in the interests of the kuri starters. The Government will be pleased to know that the minority report of the Kuri Committee appointed by them embodied an identical recommendation. The minority report was to the effect that the majority report allowing the filing of a suit for all the future instalments together with liberty to the subscriber to pay the defaulted amount with costs of the entire suit should be modified on the lines of this resolution. A kuri having a very large capital will require heavy court fees for filing suits and big amounts will have to be found by the starter himself for filing the suit and the subscriber will have to pay the same if he is to get any relief. Suppose the defaulted amount is only Rs. 200 and the capital of the kuri Rs. 5 or 6 thousand. The suit will be filed by the starter for the five or six thousand and the subscriber will have to find not only the 200 rupees defaulted but also the entire court fee for five or six thousand. If the amounts are not deposited before the evidence is entered the suit will be decreed. It will be well-nigh impossible for the subscriber to find such big amount. So by the kuri proclamation there is practically no relief for the subscriber. The resolution is to the effect that a Proclamation might be issued to make it possible for the starter to sue and the subscriber to pay up the defaulted amounts and court fee

LIBRARY ARCHIVES Kerala Legislative Assembly

thereon failing which the starter will be entitled to convert the suit into one for the whole of the future instalments. This will be in my humble opinion a great help to the subscriber and to the starter. I hope this House will accept my resolution.

Mr. A. Eachara Menon.—I beg to second it.

Mr. K. Achyuta Menon.—Sir, the Government regret very much that they have to oppose the resolution. I hasten to assure the House that the Government are fully aware of the object with which the resolution is brought, namely, the alleviation of distress of subscribers to kuries who find it very hard to subscribe regularly to the instalments in kuries. But the opposition of the Government is due to certain practical difficulties in having legislation on these lines. I will make it very clear that we are in perfect sympathy with the object (*Hear, hear*). But I will place certain facts before this House and we will all discuss whether these are not serious difficulties in the way of accepting this resolution. Of course it is our joint task to see that the remedy should not be worse than the disease. Now in the first place I ask what is the justification for confining this resolution to the kuri subscribers alone. It has been held that the relation between the starter and subscriber is that of a lender and borrower. That is to say, a man who gets his prize in auction is given a loan repayable in a certain specified instalments. There are numerous instances of other contracts of the same nature where payment is made by instalments. The question is when default has been made for one or two instalments whether a clause enabling the creditor to sue for the whole amount should be put into operation or not. There is absolutely no difference between a subscriber and an ordinary borrower ; both have to pay in the promised order. Suppose you lend money to me, I need not be a kuri subscriber, and the contract between us is that the amount is to be repaid in certain fixed instalments and if default is made in the payment of any instalment the whole balance is to be repaid in a lump.

Mr. K. Ayyappan.—Are there many contracts of this nature ?

Mr. K. Achyuta Menon.—There are many contracts. I am only illustrating. In the first place I was only pointing out the difficulties. It seems to me that there is no point in confining this relief to subscribers alone. Besides the relations between the starter and subscriber of kuris are rather very peculiar. It should be remembered that the starter of a kuri has correspondingly greater obligations to the subscribers and for the matter of that he has to depend entirely on the punctual payments from the subscribers.

Mr. A. Sankara Menon.—But this resolution is not intended to interfere with that.

LIBRARY ARCHIVES Kerala Legislative Assembly

Mr. K. Achyuta Menon.—In the first place you do not distinguish between people who can pay and who cannot pay: Suppose a man who is in a position to pay makes willful default, he may be a very rich man and the default may be intentional, why should he be given the benefit of this clause ? This resolution applies to both namely, one who cannot pay and one who would not pay. Before we embark upon legislation of this sort we have to seriously take stock of the situation. That is one thing.

Now let us look at the practical working of this resolution. I feel convinced that there are very serious difficulties to the way. Suppose a kuri starter is compelled by legislation to bring in a suit for the instalments defaulted and he is given the right to convert the suit into one for the whole amount, what precludes the subscriber from contending that there has been a waiver for the defaulted instalments. That is one thing. I think, personally, that contention can validly be raised. Anyhow it is a matter for expert opinion. It seems to me that if once a kuri starter sues for the defaulted instalment the legislation does not stop the right of the defendant on the converted plaint to contend that there has been a waiver in the first instance. That is another practical difficulty.

When you bring a suit for the defaulted instalment you are given time to deposit that amount till evidence is tendered. Suppose the kuri subscriber puts in some frivolous contentions in order to prolong the suit. He can go on doing that to a certain extent. Issues will have to be framed upon the contentions. Before the evidence is entered he will not deposit the amount. Then the starter will have to convert the plaint into one for the whole amount. Then the subscriber will be at liberty to put in a new written statement. Again issues will have to be framed upon it. In that way he might prolong the evidence. All this will cause considerable loss to the starter who has to make punctual payments for meeting his obligations to the other subscribers. That is another difficulty. Then again, we have already got this relief now in another form. Even now in suits for the whole amount, if the amount is deposited on the first hearing, the suit automatically goes. The only difficulty may be the payment of court fee which is inevitable under the circumstances. You do not look at the other man's standpoint. He will be driven to the necessity of filing suit after suit for every instalment defaulted. What prevents a contumacious subscriber from saying that I will pay only on the last day when the case comes up for hearing. Therefore I say we must be satisfied with legislation which provides that even though the starter sues for the whole amount the subscriber is at liverty to deposit the defaulted amount and escape the liability to pay the

LIBRARY ARCHIVES Kerala Legislative Assembly

whole amounts. The resoultion is an unnecessary interference with the rights and privileges of kuri starters.

Mr. K. Mohamed Seethi.—If I have understood the Proclamation aright, the starter has to sue for the whole amount.

Mr. K. Achyuta Menon —In the case of any person who has entered into a contract with another man to pay a certain sum in certain definite instalments, the lender can sue the borrower for each defaulted instalment.

Mr. A. Sankara Menon.—It is doubtful.

Mr. K. Achyuta Menon.—The opinion of the Hon'ble member is entitled to great weight, coming as it does from a very eminent lawyer. But he says it is only doubtful. The question is can we not rest assured in these circumstances with the action so far taken. The Government realises the difficulties of the subscriber in finding money to pay up the instalments. Even where the kuri starter sues for the whole amount I say ample liberty is given to the subscriber to deposit the defaulted instalment and get out of the suit. That is how the matter stands. Should you go further and say that the starter should be compelled to sue for the default of each instalment and then be given the liberty to convert the suit into one for redemption if the amount is not deposited before evidence is tendered. It seems to me that if we adopt this resolution we will be taking a very serious step. As a matter of fact legislation on these lines brought with the object of postponing or starting collection of over due obligations will not have the desired effect. That is my belief. We feel honestly that the resolution has to be looked into more carefully. We have to find out what would be its reactions. What is good for one may be an evil to the other. We have already a legislation. This was considered sufficient by the Government. The Hon'ble members on the other side should not misunderstand our attitude. We ask them in all earnestness to consider this matter carefully. If you still presist in thinking that this thing is better and that it will not affect the kuri starters we are prepared to consider it. We do honestly feel that there will be obvious difficulties in the practical working of the Resolution.

മിസ്റ്റർ പി. കുമാരനെഴുത്തച്ഛൻ.—സർ, ഇവിഷയത്തിൽ ബഹുമാനപ്പെട്ട ലീഡറുടെ പ്രസംഗം കഴിഞ്ഞതിനശേഷം ഞാൻ എഴുന്നേറ്റുനിന്നു വല്ലതും പറയുന്നതു് പക്ഷെ അബദ്ധം ആകുമായിരിക്കാം. അദ്ദേഹം പറഞ്ഞ സംഗതികളെടുത്തു പരിശോധിച്ചുനോക്കുമ്പോൾ അതിനു ഒരു മറുപടി പറയുവാൻ യാതൊരു പ്രയാസവുമുണ്ടെന്നു് എനിക്കു തോന്നുന്നില്ല. (ഹിയർ, ഹിയർ,) ആ മറുപടി ഒന്നു അദ്ദേഹത്തിനു ബോദ്ധ്യമായാൽ അ

LIBRARY ARCHIVES Kerala Legislative Assembly

തോട്ടുകൂടി ഗവമ്മെണ്ടു് ബ്ലാക്കൊന്നാകെ ഈ പ്രമേയം സ്വീകരിക്കുമെന്നാണു് ഞാൻ വിചാരിക്കുന്നതു്. ഒന്നാമതായിട്ടു അദ്ദേഹത്തിന്റെ ദൃഷ്ടിയിൽ കാണപ്പെടുന്ന ഒരു ബുദ്ധിമുട്ടു്, കുറിയിൽ വീഴ്ചവരുത്തിയ ആളുകൾക്കു് ബാധകമാക്കുവാനുള്ള ഒരു അപേക്ഷയാണു്. ഇതെങ്കിലും, ഈതരത്തിലുള്ള വേറേയും എടവാടുകളുമുണ്ടാകുമെന്നാണു്. രണ്ടാമതായി ഒരു ഗഡുവിൽ പണമടച്ചില്ലെങ്കിൽ അടയ്ക്കേണ്ടപണം ഒന്നാകെ പിടിച്ചുകൊള്ളണമെന്നുള്ള ഒരു വിളംബരം പ്രസിദ്ധപ്പെടുത്തണമെന്നുള്ളതാണു്. ഈ സംഗതിയെപ്പറ്റി ഇങ്ങനേയുള്ള ഉദ്ദേശമാണു് ഗവമ്മെൻറിനു് തോന്നിയിട്ടുള്ളതെങ്കിൽ ഇതിലേയ്ക്കു് വേറെയൊരു രൂപത്തിൽ ഒരു റസല്യൂഷൻ വേണമെങ്കിൽ കൊണ്ടുവരാം. ഇതിന്റെ മറുപടിയൊക്കെ സസന്തോഷം സ്വീകരിക്കാൻ തയ്യാറുമാണു്.

ഇതു് സാധാരണ കുറി സ്റ്റാർട്ടേഴ്സിന്റെ കാര്യത്തിൽ മാത്രം ബാധിക്കുന്ന ഒന്നാണെന്നു് ബഹുമാനപ്പെട്ട ചീഫ്കോടതിയിൽനിന്നും വിധിയുണ്ടായിട്ടുണ്ടു്. ആ ഘട്ടം ഇപ്പോൾ ഒന്നുമാറിയിരിക്കുന്നു എന്നേയുള്ളു. അവരുടെ അവകാശങ്ങളെ ഇപ്പോൾ ഈ വിളംബരംമൂലം എടുത്തുകളഞ്ഞിട്ടുണ്ടു്. ഇന്നു കുറിലോകത്തെ ആകെ ബാധിക്കുന്ന ഒരു കാര്യമാണു് ഇതു്. കുറിയിൽ ചേർന്നവക്കു തല്ക്കാലം ഒരു ശാന്തിയുണ്ടാകുവാൻ ഇതുകൂടാതെ വഴിയില്ല എന്നു് ബോദ്ധ്യപ്പെട്ടതിന്നു ശേഷം ഒരു കമ്മിറ്റിയെ നിശ്ചയിച്ചു് അവരുടെ റിപ്പോർട്ടു് വന്നതിന്നുശേഷം അതുവെച്ചുകൊണ്ടാണു് ഇങ്ങനെ ഒരു വിളംബരം പാസാക്കിയതു്. ഇപ്പോൾ ഈരാജ്യത്തിലുള്ള പ്രധാന കുഴപ്പം ഇതാണു് കുറികൾക്കു് സംഖ്യയടക്കുവാൻ നിബന്ധനകളുണ്ടെങ്കിലും അതിലേയ്ക്കുവേണ്ടി കോടതിയിൽപോയി നടപടികൾ നടത്തുന്നതാണു് സാധുക്കൾക്കു കഷ്ടമായി തീർന്നിട്ടുള്ളതു്. അതിലേക്കു ഒരു നിവൃത്തി വരുത്തുവാനാണു് ഒരു വിളംബരം ആവശ്യമുള്ളതു്. ഈ സ്ഥിതിയിൽ കുറി തുടങ്ങിയ ആളുകളുടെ ബുദ്ധിമുട്ടുകളേയും കഷ്ടപ്പാടുകളേയും പറ്റി ചിന്തിച്ചിട്ടു് ആവശ്യമില്ല. ഇപ്പോൾ ആയിരം രൂപാ വയ്ക്കേണ്ട ഒരു കുറിയ്ക്കു് ഒരു ഗഡുവിനു നൂറു രൂപാ വയ്ക്കേണ്ടതുണ്ടായിരിക്കും. ആ നൂറു രൂപായ്ക്കുമാത്രം വ്യവഹാരം കൊടുക്കത്തക്കവണ്ണമുള്ള ഒരു വിളംബരം വേണമെന്നാണു് ഈ റസല്യൂഷൻ കൊണ്ടു് ആവശ്യപ്പെടുന്നതു്. ഇന്നുള്ള നിയമം അനുസരിച്ചു് ആയിരം രൂപാ ഒന്നാകെ വയ്ക്കേണ്ട ഒരു കുറിക്കായ്തരത്തിൽ ഒരു ഗഡുവിന്നുള്ള നൂറു രൂപാ വയ്ക്കാതെ വീഴ്ചവരുത്തിയാൽ ആ നൂറു രൂപായ്ക്കു് വ്യവഹാരപ്പെട്ടാൽ പോരെ എന്നാണു് ഞാൻ ചോദിക്കുന്നതു്. ഇതുകൊണ്ടു ഉപയോഗപ്പെടാവുന്ന നിലയായിട്ടുണ്ടോ എന്നു് സംശയമാണു്. മുടക്കിയ സംഖ്യയ്ക്കു മാത്രം വ്യവഹാരപ്പെടുകയും ബാക്കിയുള്ള കാര്യങ്ങളെ ഉപേക്ഷിക്കുകയും ചെയ്യേണ

LIBRARY ARCHIVES Kerala Legislative Assembly

മെന്നുള്ള ഒരു നില ഈ ഒരു നിയമം കൊണ്ടുവന്നാട്ടുള്ളതായി എനിക്കു തോന്നുന്നില്ല. അങ്ങിനെ ഒരു നിയമമുണ്ടായിരുന്നു എങ്കിൽ അതിന്നു് അർത്ഥവുമുണ്ടായിരുന്നു. ലീഡറുടെ പ്രസംഗത്തിന്റെ അവസാനത്തിൽ, കെട്ടിവെയ്ക്കാതെയുള്ള സംഖ്യയ്ക്കും വ്യവഹാരപ്പെടാം എന്നു പറയുകയുണ്ടായി. അതു വരുമ്പോഴാണു് ഒന്നാകെ സംഖ്യ കിട്ടുവാനുള്ള വാദവും വരിക. ഒരു ഗഡുവിനു് വീഴ്ചവരുത്തിയവരുടെ പേരിൽ വ്യവഹാരം കൊടുത്താൽ കോടതിയിലെ ഉത്തരവനുസരിച്ചു് പ്രതിയെക്കൊണ്ടു കോട്ടുവിലവും മറ്റും കെട്ടിവെപ്പിക്കുന്നു. അതിനുശേഷം കല്പിച്ചുകൂട്ടി പിന്നേയും അയാൾ വീഴ്ചവരുത്തുകയാണെങ്കിൽ വീണ്ടും വ്യവഹാരംതന്നെ കൊടുക്കേണ്ടിവരും അതിന്റെ മറ്റൊരാഗം ഇവിടെ നോക്കുന്നില്ല. നൂറു രൂപാ കെട്ടിവെക്കേണ്ടതിനുപകരം കോട്ടുഫീസടക്കം നോക്കിയാൽ ആയിരം രൂപാ വരെയാകും. അങ്ങിനെ ഒന്നാകെ കെട്ടിവെച്ചാൽ ഈ വിളംബരംകൊണ്ടുള്ള ഫലമായി. അതിനേക്കാൾ നല്ലതാണു് ഇതെന്നു വിചാരിച്ചാൽ മതി. വിളംബരത്തിൽ പറയുന്നഭാഗം നോക്കിയാൽ, വീഴ്ചവരുത്തിയതിനു് വ്യവഹാരപ്പെട്ട ആൾക്കാരുടെ പേരിൽ വീണ്ടും വരുത്തുന്ന വീഴ്ചയ്ക്കു വ്യവഹാരം കൊടുക്കുവാനുള്ള അവകാശംകൂടി കുറിക്കാക്കുള്ളതായികാണുന്നുണ്ടു്. അങ്ങിനെയാകുമ്പോൾ കോട്ടുഫീസടക്കം ഒരു അന്യായമായ ലാഭം കുറിസ്റ്റാർട്ടേഴ്സിനു് കിട്ടും. ഇങ്ങിനെ അന്യായമായ ഒരു ലാഭം ഉണ്ടാക്കിക്കൊടുക്കണമെന്നാണു് ഗവൺമെണ്ടിന്റെ ഉദ്ദേശമെങ്കിൽ പിന്നെയാതൊരു നിവൃത്തിയുമില്ല. അല്ലാത്തപക്ഷം ഇരുകക്ഷികൾക്കും ഗുണപ്രദമായ ഈ പ്രമേയത്തെ സ്വീകരിക്കാതിരിയ്ക്കുന്നതിനു് യാതൊരു ന്യായവും കാണുന്നില്ല. അതുകൊണ്ടു ഞാൻ ഇതിനെ പിന്താങ്ങുന്നു.

Mr. George Chakyamuri.—I am afraid there is some confusion of thought with regard to this. I am one of those who first opposed the very idea underlying the proclamation. At any rate, I was not in favour of the proclamation. It is my experience and it is still my view that the proclamation in question is calculated to do a lot of mischief. I perfectly agree with the Revenue Member when he says that the Government should not interfere with the sanctity of private rights of parties, and I still maintain that it is not advisable for any Government to interfere with the sanctity of the private right of parties. From the starter's standpoint, what we find is the subscriber can say "Well, if the suit comes it is enough if I pay the defaulted amount." So, there is no necessity on the part of subscriber to pay up the amount in time and the starter is not in a position to pay up to the other prize winners and is put to great difficulties. In fact, at the time this proclamation was brought

LIBRARY ARCHIVES Kerala Legislative Assembly

into effect people were in very great difficulty and this proclamation has served only to increase these difficulties. But what I respectfully beg to submit is : given the proclamation as it is, there is no meaning unless this resolution is accepted by Government. That is to say, the situation is this to put it plainly. Now, you have given the right to the subscriber to get relief by paying up the defaulted instalments and the court fee and vakil's fee if those payments are made before the suit comes up for hearing. If that is done, the suit is struck off the file and parties are restored back to their original position. As it is what is happening is this:—Our kuries are generally for Rs. 2,000, 5,000, or Rs. 1 ,000. Take the instance of an average kuri of Rs. 5,000. The amount to be paid by the subscriber for one instalment would be Rs.200 and if a suit is to be brought for the full Rs. 5,000, court fee alone would come to at least Rs. 300, vakil's fee Rs. 200 plus the instalment the amount comes to Rs. 700. It therefore becomes absolutely impossible for the subscriber to get relief and in effect the suit is decreed. If you really want to give some relief to the subscriber, there must be a law that the suit can be brought for the defaulted amount alone. Personally, I am not for interfering with the rights of private parties. "As it is a matter of fact, the party who stands to gain is the Government. What is happening is, you get full court fee on Rs. 5,000 *viz.*, Rs. 300 and the Government Treasury gains. Next time another suit for Rs. 4,000. Government gets another Rs. 200 court fee. So, the person that stands to gain is the Government under the existing agreement.

With regard to the agrument that the starter would be put to the difficult position of bringing several suits, I say, the present circumstances are worse. In the present circumstances, supposing a suit is brought and the subscriber pays up the defaulted amount, he has to sue again for the whole amount and this means double the amount of court fee. If it is laid down that the starter can sue only for the defaulted amount, then the result anticipated can be achieved. I say the proclamation is absolutely useless ; it is mischievous and it has done incalculable harm to the starter. It you propose to give some relief, do this. Otherwise, you may go back to the original conditions. So that my respectful submission is consistently with the position taken up by Government. Government cannot but accept this resolution. I do not think there are very many legal difficulties standing in the way. I speak from my own personal experience. Generally when suits are brought, the starters sue for the full amount. If a suit is to be dismissed on payment by the subscriber the subscriber will have to pay unnecessarily the court-fee and vakil's fee for the entire

LIBRARY ARCHIVES Kerala Legislative Assembly

amount. So, it is not consistent with the position we have taken up of relieving the subscribers. As I said in the beginning I am even now against Government interference with private rights of parties. There is no use of this Proclamation if this resolution is not accepted. But if Government is going to repeal the Proclamation I would wholeheartedly subscribe to the idea.

Mr. A. Sankara Menon.—I fully agree with the Member who has just now spoken. That is a complete answer to what the Hon'be Revenue Member has argued in favour of rejecting this resolution. The only difficulty so far as I can see is with regard to the court which ought to be selected for filing suits. Suppose the suit brought is only for one instalment the suit may very well lie in the Munsiff's court but if the suit is for the whole amount it may have to go to the District Court. If such a contingency occurs there must be a direction that the starter is at liberty to institute the suit in the higher court. With that modification I think it is necessary to accept this resolution in order to give full effect to the Proclamation that has been issued. The object of the resolution is to prevent full court fee being realised upon amounts that are not to be decreed and also full Vakil's fee being paid on relief, not to be granted to the plaintiff.

With regard to some of the objections pointed out by the Hon'ble Member for Revenue I cannot see anything in them. If in regard to the instalment bonds Government had passed a similar Proclamation, a similar resolution in that behalf would be quite in order and necessary. With regard to instalment bonds there is no such legislation now. That parellel will not therefore apply.

With regard to the other objections of a technical nature I do not want to speak at large upon them. My own opinion is that there is absolutely nothing in them.

Mr. A. Sankara Poduval.—Sir, I regret my inability to support this resolution. We are not concerned here with the policy of the Proclamation at all. The Proclamation issued was only meant to afford temporary relief. This aspect of the question would certainly have been considered when the Kuri Regulation was drafted. Taking all the pros and cons, into consideration rules have been laid down more in the interest of the subscriber than in the interests of the starter. There are ample facilities given to the subscriber. Why should the Government extend the relief still further, when the Proclamation is silent upon that point.

In regard to the payment of court fee, is there anything wrong in a Government levying court fees upon civil suits instituted? Why should there be a change in the law so as to

LIBRARY ARCHIVES Kerala Legislative Assembly

deprive Government of its court fee? Now the alternative suggested, by the mover is certainly unacceptable to me,—"with power to convert the suit into one for the whole of the future instalments in case the defaulted amount and costs are not deposited in court before evidence is entered". And what is the intervel, quite a short period, i.e., before the evidence is entered? When a suit is brought under the Kuri Regulation the defaulter can deposit the amount and be relieved. This resolution gives him a further period of two or three weeks more. He is not going to gain very much thereby.

Two Hon'ble Members here said that if the Government should conform itself to the provisions of the Proclamation this is the legitimate process. The Proclamation respects the doctrine of freedom of contract but allows defaults to be condoned. All aspects of the question were considered even when the Kuri Regulation was passed and as much relief granted as was possible under the circumstances without greatly intefering with the rights of private parties.

Mr. P. Kumaran Ezhuthassan.—Which Proclamation? There is no Kuri Regulation subsequent to the Proclamation.

Mr. A. Sankara Poduval.—No. But the matter was considered in Committee. There is no meaning in saying that the terms of the Kuri Regulation should be departed from, and that defaulters should be given some other facilities which were never meant to be given. They are given ample facilities—10 days grace, notice etc.—why should the starter alone be hit at and that at the instance of persons who have already drawn the money? We are here affording further redress to people who have already drawn the money. I don't see any justification or any such indulgence being shown.

Mr. P. Krishna Menon.—Sir, in my short experience of 5 years in this Council I have not come across a more glaring instance of the ingenuity of lawers though I do not pretend to be classed amongst them. I wish to add one word and one word only. I am led to think that the Hon'ble Leader of the House spoke more as the Superintendent of Stamps rather than the eminent laweyr that he is. Carefully looked at the only person who gains under the present Proclamation or the only person who will lose if the resolution is passed is the Government and the Government only. Perhaps eminent Vakils also. The relief sought to be attained by accepting this resolution is a relief only in the matter of court fees and Vakils fees. Of course the money is to be deposited by the defendant and the plaintiff has to draw that. But he draws only what he has paid. So he is not the better off for the drawing; and who is the person who has not to refund what has been received? The

LIBRARY ARCHIVES Kerala Legislative Assembly

Government, in the shape of court fee. There if really the resolution is accepted the Government may be deprived to some extent of the stamp duty which it is now entitled to realise according to the terms of the Proclamation.

With regard to the other difficulties that have been pointed out by the Leader of the House it is not for me to say, because persons who are more competent than myself have replied to them. With regard to the first at least I may be permitted to say one word. With regard to similar contracts of instalment payments entered into between the parties why was not that included in the original proclamation or the Kuri Regulation? It was thought that it was a peculiar concern requiring peculiar remedy, Therefore that was allowed and the Proclamation as well as the Regulation refers to Kuries and Kuries only. Why should instalment payments of contract be taken into consideration in that connection? I submit there is nothing which will be really prejudicial to the starter unless as illustrated by the Hon'ble Leader of the House there happens to be contumacious wilful default who want to be sued for the pleasure of appearing in courts. Such contingency is hardly likely to crop up and therefore such apprehensions need not be entertained by this House. I strongly support the resolution.

മിസ്റ്റർ കെ. അയ്യപ്പൻ.—വലിയ നിയമജ്ഞന്മാരും മറ്റും പ്രസംഗിച്ചതിനശേഷം ആ വക ചരിജ്ഞാനമില്ലാതെ ഒരാൾ പ്രസംഗിയ്ക്കുമ്പോൾ അതിൽ അത്ഭുതം തോന്നിയേയ്ക്കാം. ഈ നിശ്ചയത്തിന്റെ ഉദ്ദേശം കുറി നടത്തിപ്പുകാരെ വൈഷമ്യത്തിലാക്കാതെ കുറിയിൽ ചേരുന്നവരേയും രക്ഷിയ്ക്കണമെന്നുള്ളതാണ്. ഇപ്പോൾ രണ്ടു മാതിരി കുറി സ്റ്റാട്ടേഴ്സുണ്ട്. ഒരു കൂട്ടർ ചിറ്റാളന്മാരുടെ ഇടയിൽ കുഴിയുമെങ്കിൽ അപഹരിയ്ക്കണമെന്നുള്ളതാണ്. പിന്നെ ഒരു കൂട്ടർ കുറി ശരിയായി നടത്തി അവസാനിപ്പിച്ചു അതുകൊണ്ടു ന്യായമായുള്ള ഗുണം മാത്രം സിദ്ധിയ്ക്കണമെന്നുള്ളവരാണ്. രണ്ടിനെയുള്ള വ്യത്യാസം ഈ നിശ്ചയപ്രകാരമുള്ള ഒരു നിയമം വരുന്നതു സന്തോഷമായിരിയ്ക്കും. ചിറ്റാളന്മാരെ രക്ഷിയ്ക്കണമെന്നുള്ള വ്യത്യാസം മാത്രമെ ഇതിൽ എതിർപ്പുണ്ടാകയുള്ളൂ.

Mr. M. A. Chakko.—After hearing the discussion on the subject, I cannot support this resolution. As has been observed by the Hon'ble Member for Palluruthi, the Proclamation has done much injury to the starters of the kuri in as much as no provision has been made for their safety from the suits that come from the subscribers who have won the ticket and are entitled to get payment from the kuri starters. The kuri starters have a duty and a liability to pay to the winners of the ticket at a particular time according to the kuri vaimbu conditions. The Proclamation has been intended particularly to give relief to the subscribers who have made default on account of peculiar

LIBRARY ARCHIVES Kerala Legislative Assembly

circumstances, by allowing them to get extricated from the penalties of the kuri agreement. So if time is taken by the kuri subscribers who have won the ticket, received their money and entered into bonds with the starter to pay their instalments, then anybody can understand the total amount which the kuri starter should have to payoff the winner will be less by that sum for a considerable period of time. Unless he comes by the whole amount, he has to go about borrowing in order to pay the winner of the particular ticket. Where is he to borrow from? How he is to borrow? All these circumstances have not been thought of in the Proclamation. The Hon'ble Member for Mulakunnathukavu was just mentioning that the kuri starters will be managing somehow or other. The circumstances that led to the Proclamation he says need not be now gone into now, because that mischief has already been done. The Proclamation had in view only to give relief in very extreme cases. In ordinary cases the Proclamation had no purpose or idea to give relief. The relief that the Proclamation had in view was to save the defaulting subscriber from that extreme penalty of losing his security or any property that he had pledged for the due repayment of the subscriptions in time. He had in order to be saved from the severe penalty to pay a lesser penalty. It was not the purpose to save him from any penalty at all. The penalty that was imposed upon him, of course as lesser evil, is that he has to pay the full court fee for the whole amount. The proposition now before the House seeks that he must be saved from that penalty also and he must be at liberty to take his own time to pay the subscription to the starter. But no compensating relief is thought of on behalf of the starter at all. When you relieve the subscriber from certain penalties—first of all the severe penalty was to pay the whole amount in a lump—now he is saved this by incurring a lesser penalty *viz.*, to pay the court fee as well as the instalment subscription. Now that penalty of the court fee is also proposed to be removed—the starter will be greatly injuriously affected by the tactics of the defaulting subscriber. While granting relief to one party the other party's suffering must also be considered. It was said that all these points have been considered in due time by the Committee at the time of the issue of the Proclamation. This is simply trying to get out of the difficulty without having the courage to face it. We have here to face the difficulty namely that the starter is a sufferer as well as the subscriber. It cannot be said that it would be a great relief to the starter when it does not become necessary for him to find sufficient funds to pay the court fee for the bigger amount. For if he finds money and pays the bigger court fee there is the circumstance that it falls as penalty on the subscriber who makes the default. That is the weapon which will be keeping him in terror against delay

LIBRARY ARCHIVES Kerala Legislative Assembly

ing payment and causing suits. On these grounds I oppose this motion.

Mr. Joseph Pettah.—Sir, I was just listening to the expert speeches on both sides. My difficulty is this; that there are two parties in this case, the starter and the subscriber. Now there is also the ordinary debtor and creditor. In the case of a Kuri subscriber who has drawn the prize money I think he is in a better condition than the ordinary debtor. He has already drawn the prize and he has invested the amount and therefore very often with the interest on that prize money he can subscribe the instalments. So the ordinary debtor deserves a better relief than the ordinary subscriber. The special advantage on the part of the subscriber is that if the subscription is not realised he is not answerable to another man. But the Kuri starter is answerable to a third party i. e., the party who has drawn the prize. If that is not paid that man will file a suit. According to the Proclamation if the suit is to be filed for the whole amount the subscriber has to pay not only the defaulted amount but also the interest on the amount and costs which I should think is a deterrent on him from defaulting on a future occasion. If this resolution is accepted he will have to institute frequent suits and thus increase litigation. It is our duty to see that frequent litigations are avoided. In this case I think if this resolution is accepted it would be increasing litigation. I should think the spirit of the Proclamation is alright. If a subscriber makes a default once by mistake for any reason he is given a concession once but only with a penalty which will prevent him from repeating the default. So I should think the Proclamation gives such relief as is necessary under the circumstances taking also into consideration that he is a man who has won the prize and has got an advantage. But he is not in the position of an ordinary debtor. For this reason I think if the resolution is accepted we shall be putting unnecessary hardship on the Kuri starters and we would be creating occasion for frequent litigations.

Mr. K. Ayyappan.—Sir, I move for a closure.

Mr. T. K. Nayar.—I second it.

Motion put and carried.

Mr. K. Mohamed Seethi.—Sir, all the points raised by the other side by way of difficulties to the resolution being accepted have been very effectively answered by the Hon'ble Members on this side. The legal difficulty raised by my Hon'ble friend the Leader of the House is that suing for the defaulted amount alone would be a waiver of the original contract. I hope it was clearly pointed out by my Hon'ble friend Mr. Ezhuthassan that even present Proclamation creates all the difficulties pointed out by the other side.

LIBRARY ARCHIVES Kerala Legislative Assembly

Mr. K. Achyuta Menon.—In this case the cause of action will be different. Suppose you sue now for the default of 1109 and if that amount is deposited that default is at an end. The next suit cannot be brought upon the default of 1109. It can still be brought upon a default of 1110. In that case this question of waiver will not arise. Suppose you are suing upon that identical default, there is some difficulty. That is the distinction.

Mr. K. Mohamed Seethi.—It is a distinction without difference. Then the other difficulty raised by my Hon'ble friend is that this must be extended to other contracts. All these difficulties were considered at the time the Proclamation was issued. If the Proclamation is a right measure adopted by the Government none of these arguments will stand against the proposed Proclamation. The difficulties pointed out by them are absolutely imaginary. The Leader of the House has been arguing whether this concession should not be extended to other contracts. It was for valid reasons that it was not extended to other contracts. If it is not extended to other forms of contracts the people are not going to be affected very much. Because such other contracts are very few and far between. The Kuries are the most common form of these contracts requiring instalment payments. If Kuries are given this relief the people are relieved to a very great extent. That was the reason why the other contracts were not included in the Proclamation. People are not complaining that they have not been included. On the question of Kuries repeated representations from different parts of the State have been forthcoming saying that the relief afforded by the Proclamation is no relief at all, on account of the fact that people find it difficult to deposit the heavy court fees in Kuri suits. I respectfully submit there is absolutely no difficulty in accepting this resolution in view of the fact that the first Proclamation still stand without challenge. My Hon'ble friend the Member for Trichur was referring to the Kuri Regulation and was contending that there is no use of falling back upon the Proclamation. He does not remember the sequence of events. The extension of the original proclamation took place after the Kuri Regulation. He forgets that and says that we have to fall back upon the Regulation. What has the Regulation to do in this matter? The condonation of the penalty on account of the accelaration clause is a relief given by the proclamation and by a modification of the proclamation alone can we have the relief sought by the resolution. We respectfully ask the Government to accept this resolution. Then alone will people be relieved. As between two evils we choose the lesser evil and if you choose it once stick to it and make it effective. With these words, I commend this resolution to the acceptance of the House.

LIBRARY ARCHIVES Kerala Legislative Assembly

Mr. K. Achyuta Menon.—With all due deference I still remain unconvinced. I started by saying that the basic idea which underlies all legislation is that one should as far as possible respect the freedom of private contracts. But if a man has defaulted the performance of the private contract, give him such relief as you can, always respecting the freedom of contract. That is the basic idea for instance of the tenancy legislation. Suppose the tenants do not pay arrears of rent for 3 years. The landlord has got a right of suit for eviction. But if in any suit instituted for the purpose, the rent in arrears is deposited, the forfeiture is relieved against. Similarly the Kuri starter can bring a suit for the entire amount and the subscriber is given the opportunity to deposit the instalments in arrears and begin afresh. If a subscriber defaults in the payment of the subscriptions the law should not step in and wipe out the whole contract. The Proclamation in existence is sufficient to protect Kuri subscribers. How is the Kuri starter in a different position from the landlord, who sues the tenant for arrears of rent? Does the law step in and say that the landlord should sue only for the arrears of rent, with liberty to convert the suit to one for eviction if the amount is not paid? Is that the Tenancy Law?

Mr. K. Mohamed Seethi.—The analogy does not hold good here.

Mr. K. Achyuta Menon.—It is on all fours with this.

Resolution put and carried, the Deputy President voting for the motion.

Mr. M. A. Chakko.—Poll, Sir.

The House divided—Ayes 15 and Noes 14.

	Ayes.		Noes.
1.	Mr. K. Ayyappan	1.	Mr. K. Achyuta Menon
2.	,, A. Eachara Menon	2.	,, M. A. Chakko
3.	,, K. M. Ibrahim	3.	,, M. P. Cherian
4.	,, C. N. Ittiravi Nambudiri	4.	,, M. Krishna Menon
5.	,, T. K. Nayar	5.	,, Thomas Manjuran
6.	,, P. Krishna Menon	6.	,, A. I. Mani
7.	,, P. Kuttaran Ezhuthassan	7.	,, C. J. Mathew
8.	,, Paul Mampilli	8.	,, T. Narayana Menon
9.	,, K. T. Mathew	9.	,, P. Nilakanta Menon
10.	,, K. Mohammed Seethi	10.	,, Joseph Pettah
11.	,, T. A. Ramachandra Ayyar	11.	Rama Varmba Tampuran
12.	,, A. Sankara Menon	12.	Mr. P. V. Raphael
13.	Dr. K. Sankara Menon	13.	,, A. Sankara Poduval
14.	Mr. K. P. Vallon	14.	,, P. V. Subramania Ayyar
15.	Deputy President		

Deputy President.—I give my vote in favour of the proposition.

The House rose for the day at 5 p. m.

C. J. MATHEW,
Secretary to the Council.

LIBRARY ARCHIVES Kerala Legislative Assembly